

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56240; File No. SR-ISE-2007-49)

August 13, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to Fee Changes on a Retroactive Basis

I. Introduction

On June 15, 2007, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its Schedule of Fees on a retroactive basis. The proposed rule change was published for comment in the Federal Register on July 10, 2007.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

ISE proposes to amend its Schedule of Fees to: (1) increase the per contract surcharge from \$0.10 per contract to \$0.15 per contract for options on the Russell 1000® Index (“RUI”), the Russell 2000® Index (“RUT”), and the Mini Russell 2000® Index (“RMN”); and (2) refund surcharge fees collected for transactions in options on the iShares Russell 2000® Index Fund (“IWM”), the iShares Russell 2000® Value Index Fund (“IWN”), the iShares Russell 2000® Growth Index Fund (“IWO”), the iShares Russell 1000® Value Index Fund (“IWD”) and the iShares Russell 1000® Index Fund (“IWB”), in both cases for the period commencing January 1,

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 56005 (July 3, 2007), 72 FR 37555.

2007 and ending June 15, 2007 (the “Retroactive Period”). The Exchange proposes the surcharge increase to become effective retroactively, as of January 1, 2007.<sup>4</sup>

The Exchange revised its license agreement with the Frank Russell Company (“Russell”), effective January 1, 2007. Pursuant to the revised agreement, the Exchange pays Russell \$0.15 per contract to trade options on RUI, RUT and RMN. The Exchange thus proposes to increase the surcharge fee for options on RUI, RUT and RMN from \$0.10 per contract to \$0.15 per contract retroactive to January 1, 2007 and collect from members the applicable fees due to the Exchange for the Retroactive Period. This surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (e.g., ISE Market Maker, non-ISE Market Maker, and Firm Proprietary orders) and shall apply to certain Linkage Orders under a pilot program that is set to expire on July 31, 2008.<sup>5</sup>

Additionally, the Exchange had previously adopted a \$0.10 per contract surcharge in connection with the listing and trading of options on IWM, IWN, IWO, IWD,<sup>6</sup> and IWB.<sup>7</sup> However, pursuant to the revised license agreement with Russell, the Exchange, as of January 1, 2007, no longer pays a license fee to Russell in connection with the listing and trading of options

---

<sup>4</sup> On June 15, 2007, the Exchange filed a proposed rule change as immediately effective under Section 19(b)(3)(A) of the Exchange Act that: (1) removes the surcharge fee for IWM, IWN, IWO, IWD and IWB from its Schedule of Fees and (2) raises the surcharge fee from \$.10 per contract to \$.15 per contract for options on RUI, RUT and RMN. See Securities Exchange Act Release No. 55975 (June 28, 2007), 72 FR 37064 (July 6, 2007) (SR-ISE-2007-48).

<sup>5</sup> Linkage Orders are defined in ISE Rule 1900(10). Under a pilot program that was recently extended and is now set to expire on July 31, 2008, these fees will also be charged to Principal Acting as Agent Orders and Principal Orders (as defined in ISE Rule 1900(10)(i)-(ii)). See Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007).

<sup>6</sup> See Securities Exchange Act Release No. 47075 (December 20, 2002), 67 FR 79673 (December 30, 2002) (SR-ISE-2002-29).

<sup>7</sup> See Securities Exchange Act Release No. 47564 (March 24, 2003), 68 FR 15256 (March 28, 2003) (SR-ISE-2003-13).

on IWM, IWN, IWO, IWD and IWB. As a result, the Exchange proposes to refund to members the surcharge fee it has collected during the Retroactive Period.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>9</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Commission believes that application of the amendments to ISE's Schedule of Fees on a retroactive basis is appropriate and aligns revenue collected from members with license costs charged to ISE under its agreement with Russell.

### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ISE-2007-49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 17 CFR 200.30-3(a)(12).